

AMENDED IN ASSEMBLY MARCH 31, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1070

Introduced by Assembly Member Hill

February 27, 2009

An act to amend ~~Section 2227~~ Sections 801.01, 2008, 2225.5, 2227, and 2425.3 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1070, as amended, Hill. Healing ~~arts-discipline~~. arts.

(1) Existing law provides for the licensure and regulation of osteopathic physicians and surgeons by the Osteopathic Medical Board of California, of physicians and surgeons by the Medical Board of California, and of podiatrists by the California Board of Podiatric Medicine. Existing law requires those licensees, insurers providing professional liability insurance to those licensees, and governmental agencies that self-insure those licensees to report specified settlements, arbitration awards, or civil judgments to the licensee's board if based on the licensee's alleged negligence, error, or omission in practice or his or her rendering of unauthorized professional services.

This bill would specify that those reports must be sent whether or not the licensee was a named party in the underlying claim or action and would limit reports regarding claims or actions to those based on the licensee's alleged negligence, error, or omission in practice in California. The bill would also specify that the reporting requirements apply to the University of California, as specified.

Existing law requires licensees obligated to make these reports to send a copy of the report to the claimant or his or her counsel and

requires a claimant or his or her counsel who does not receive a copy of the report within a specified time period to make the report to the appropriate board. Existing law makes a failure of a licensee, claimant, or counsel to comply with these requirements a public offense punishable by a specified fine.

This bill would require any entity or person obligated to make a report to send a copy of the report to the claimant or his or her counsel.

The bill would also make a failure to comply with any of the reporting requirements an infraction punishable by a specified fine. By expanding the scope of a crime, the bill would impose a state-mandated local program.

Existing law requires these reports to include certain information, including the name and address of every physician and surgeon or podiatrist who was alleged to have acted improperly.

This bill would require the reports to include that information with respect to every physician and surgeon or podiatrist who participated in the care or professional services provided to the patient.

Existing law also requires the reports to include a brief description of the facts of each claim, charge, or allegation.

This bill would eliminate the requirement that this description be brief and would require the description to also include the role of each physician and surgeon or podiatrist in the care or professional services provided to the patient, as specified, and a list of the dates of treatment rendered by those persons.

(2) Existing law authorizes the Medical Board of California to appoint panels from its members for the purposes of fulfilling specified obligations and prohibits the president of the board from serving as a member of a panel.

This bill would allow the president of the board to serve as a member of a panel if there is a vacancy in the membership of the board.

(3) Under existing law, a physician and surgeon or podiatrist who fails to comply with a patient's medical record request, as specified, within 15 days, or who fails or refuses to comply with a court order mandating release of records, is required to pay a civil penalty of \$1,000 per day, as specified.

This bill would place a limit of \$10,000 on those civil penalties and would make other related changes.

Existing

~~*(4) Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons and other healing arts*~~

~~practitioners, including doctors of podiatric medicine. Existing law prescribes the disciplinary action that may be taken against a physician and surgeon or podiatrist. Among other things, existing law authorizes the licensee to be publicly reprimanded.~~

This bill would authorize the public reprimand to include a requirement that the licensee complete educational courses ~~selected~~ *approved* by the board.

(5) Existing law requires the board to request a licensed physician and surgeon to report, at the time of license renewal, any specialty board certification he or she holds, as specified. Existing law also authorizes a licensed physician and surgeon to report to the board, at the time of license renewal, information regarding his or her cultural background and foreign language proficiency.

This bill would instead require licensees to provide that information at the time of license renewal and immediately upon issuance of an initial license.

Existing law requires a licensed physician and surgeon to also report, at the time of license renewal, his or her practice status, as specified.

This bill would also require that this information be provided immediately upon issuance of an initial license.

The bill would also require a licensed physician and surgeon to report to the board, at the time of license renewal, if any civil action has been filed or criminal conviction has occurred, as specified, since his or her last renewal or initial licensure, as specified.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 801.01 of the Business and Professions
- 2 Code is amended to read:
- 3 801.01. ~~(a)~~ *The Legislature finds and declares that the filing*
- 4 *of reports with the applicable state agencies required under this*
- 5 *section is essential for the protection of the public. It is the intent*

1 *of the Legislature that the reporting requirements set forth in this*
2 *section be interpreted broadly in order to expand reporting*
3 *obligations.*

4 (a) A complete report shall be sent to the Medical Board of
5 California, the Osteopathic Medical Board, or the California Board
6 of Podiatric Medicine, with respect to a licensee of the board as
7 to the following:

8 (1) A settlement over thirty thousand dollars (\$30,000) or
9 arbitration award of any amount or a civil judgment of any amount,
10 whether or not vacated by a settlement after entry of the judgment,
11 that was not reversed on appeal, of a claim or action for damages
12 for death or personal injury caused by the licensee's alleged
13 negligence, error, or omission in practice *in California*, or by his
14 or her rendering of unauthorized professional services, *whether*
15 *or not the licensee was a named party in the claim or action.*

16 (2) A settlement over thirty thousand dollars (\$30,000) *of a*
17 *claim or action, whether or not the licensee was a named party in*
18 *the claim or action, if-~~it~~ the settlement* is based on the licensee's
19 alleged negligence, error, or omission in practice *in California*, or
20 ~~by~~ on the licensee's rendering of unauthorized professional
21 services, and a party to the settlement is a corporation, medical
22 group, partnership, or other corporate entity in which the licensee
23 has an ownership interest or that employs or contracts with the
24 licensee.

25 (b) The report shall be sent by the following:

26 (1) The insurer providing professional liability insurance to the
27 licensee.

28 (2) The licensee, or his or her counsel, if the licensee does not
29 possess professional liability insurance.

30 (3) A state or local governmental agency that self-insures the
31 licensee. *For purposes of this section "state governmental agency"*
32 *includes, but is not limited to, the University of California.*

33 (c) The entity, person, or licensee obligated to report pursuant
34 to subdivision (b) shall send the complete report if the judgment,
35 settlement agreement, or arbitration award is entered against or
36 paid by the employer of the licensee and not entered against or
37 paid by the licensee. "Employer," as used in this paragraph, means
38 a professional corporation, a group practice, a health care facility
39 or clinic licensed or exempt from licensure under the Health and
40 Safety Code, a licensed health care service plan, a medical care

1 foundation, an educational institution, a professional institution,
2 a professional school or college, a general law corporation, a public
3 entity, or a nonprofit organization that employs, retains, or contracts
4 with a licensee referred to in this section. Nothing in this paragraph
5 shall be construed to authorize the employment of, or contracting
6 with, any licensee in violation of Section 2400.

7 (d) The report shall be sent to the Medical Board of California,
8 the Osteopathic Medical Board of California, or the California
9 Board of Podiatric Medicine, as appropriate, within 30 days after
10 the written settlement agreement has been reduced to writing and
11 signed by all parties thereto, within 30 days after service of the
12 arbitration award on the parties, or within 30 days after the date
13 of entry of the civil judgment.

14 (e) If an insurer is required under subdivision (b) to send the
15 report, the insurer shall notify the claimant, or if the claimant is
16 represented by counsel, the claimant's counsel, that the insurer
17 has sent the report to the Medical Board of California, the
18 Osteopathic Medical Board of California, or the California Board
19 of Podiatric Medicine. If the claimant, or his or her counsel, has
20 not received this notice within 45 days after the settlement was
21 reduced to writing and signed by all of the parties or the arbitration
22 award was served on the parties or the date of entry of the civil
23 judgment, the claimant or the claimant's counsel shall make the
24 report to the appropriate board.

25 ~~(f) If the licensee or his or her counsel is required under~~
26 ~~subdivision (b) to send the report, the licensee or his or her counsel~~
27 *The entity, person, or licensee obligated to report under subdivision*
28 *(b) shall send a copy of the report to the claimant or to his or her*
29 *counsel if he or she is represented by counsel. If the claimant or*
30 *his or her counsel has not received a copy of the report within 45*
31 *days after the settlement was reduced to writing and signed by all*
32 *of the parties or the arbitration award was served on the parties or*
33 *the date of entry of the civil judgment, the claimant or the*
34 *claimant's counsel shall make the report to the appropriate board.*

35 ~~(g) Failure of the licensee or claimant, or counsel representing~~
36 ~~the licensee or claimant, to comply with subdivision (f) this section~~
37 *is a public offense punishable by a fine of not less than fifty dollars*
38 *(\$50) and not more than five hundred dollars (\$500) and not more*
39 *than five thousand dollars (\$5,000). A knowing and intentional*
40 *failure to comply with subdivision (f) or a conspiracy or collusion*

1 ~~not to comply with subdivision (f), or to hinder or impede any~~
2 ~~other person in the compliance, is a public offense punishable by~~
3 ~~a fine of not less than five thousand dollars (\$5,000) and not more~~
4 ~~than fifty thousand dollars (\$50,000).~~

5 (h) (1) The Medical Board of California, the Osteopathic
6 Medical Board of California, and the California Board of Podiatric
7 Medicine may develop a prescribed form for the report.

8 (2) The report shall be deemed complete only if it includes the
9 following information:

10 (A) The name and last known business and residential addresses
11 of every plaintiff or claimant involved in the matter, whether or
12 not the person received an award under the settlement, arbitration,
13 or judgment.

14 (B) The name and last known business and residential address
15 of every ~~physician and surgeon or doctor of podiatric medicine~~
16 ~~licensee who was alleged to have acted improperly participated~~
17 *in the care or professional services provided to the patient*, whether
18 or not that person was a named defendant in the action and whether
19 or not that person was required to pay any damages pursuant to
20 the settlement, arbitration award, or judgment.

21 (C) The name, address, and principal place of business of every
22 insurer providing professional liability insurance to any person
23 described in subparagraph (B), and the insured's policy number.

24 (D) The name of the court in which the action or any part of the
25 action was filed, and the date of filing and case number of each
26 action.

27 (E) A ~~brief~~ description or summary of the facts of each claim,
28 charge, or allegation, including the date of occurrence, *each*
29 *licensee's role in the care or professional services provided to the*
30 *patient with respect to those services at issue in the claim, charge,*
31 *or allegation, and a list of the dates of treatment rendered by each*
32 *licensee.*

33 (F) The name and last known business address of each attorney
34 who represented a party in the settlement, arbitration, or civil
35 action, including the name of the client he or she represented.

36 (G) The amount of the judgment and the date of its entry; the
37 amount of the arbitration award, the date of its service on the
38 parties, and a copy of the award document; or the amount of the
39 settlement and the date it was reduced to writing and signed by all
40 parties. If an otherwise reportable settlement is entered into after

1 a reportable judgment or arbitration award is issued, the report
2 shall include both the settlement and the judgment or award.

3 (H) ~~The specialty or subspecialty of the physician and surgeon~~
4 ~~or the doctor of podiatric medicine who was the subject of the~~
5 ~~claim or action~~ *licensee who participated in the care or*
6 *professional services provided to the patient.*

7 (I) Any other information the Medical Board of California, the
8 Osteopathic Medical Board of California, or the California Board
9 of Podiatric Medicine may, by regulation, require.

10 (3) Every professional liability insurer, self-insured
11 governmental agency, or licensee or his or her counsel that makes
12 a report under this section and has received a copy of any written
13 or electronic patient medical or hospital records prepared by the
14 treating physician and surgeon or podiatrist, or the staff of the
15 treating physician and surgeon, podiatrist, or hospital, describing
16 the medical condition, history, care, or treatment of the person
17 whose death or injury is the subject of the report, or a copy of any
18 deposition in the matter that discusses the care, treatment, or
19 medical condition of the person, shall include with the report,
20 copies of the records and depositions, subject to reasonable costs
21 to be paid by the Medical Board of California, the Osteopathic
22 Medical Board of California, or the California Board of Podiatric
23 Medicine. If confidentiality is required by court order and, as a
24 result, the reporter is unable to provide the records and depositions,
25 documentation to that effect shall accompany the original report.
26 The applicable board may, upon prior notification of the parties
27 to the action, petition the appropriate court for modification of any
28 protective order to permit disclosure to the board. A professional
29 liability insurer, self-insured governmental agency, or licensee or
30 his or her counsel shall maintain the records and depositions
31 referred to in this paragraph for at least one year from the date of
32 filing of the report required by this section.

33 (i) If the board, within 60 days of its receipt of a report filed
34 under this section, notifies a person named in the report, that person
35 shall maintain for the period of three years from the date of filing
36 of the report any records he or she has as to the matter in question
37 and shall make those records available upon request to the board
38 to which the report was sent.

39 (j) Notwithstanding any other provision of law, no insurer shall
40 enter into a settlement without the written consent of the insured,

1 except that this prohibition shall not void any settlement entered
2 into without that written consent. The requirement of written
3 consent shall only be waived by both the insured and the insurer.

4 (k) *For purposes of this section, “licensee” means a licensee*
5 *of the Medical Board of California, the Osteopathic Medical*
6 *Board, or the California Board of Podiatric Medicine.*

7 SEC. 2. *Section 2008 of the Business and Professions Code is*
8 *amended to read:*

9 2008. The board may appoint panels from its members for the
10 purpose of fulfilling the obligations established in subdivision (c)
11 of Section 2004. Any panel appointed under this section shall at
12 no time be comprised of less than four members and the number
13 of public members assigned to the panel shall not exceed the
14 number of licensed physician and surgeon members assigned to
15 the panel. The president of the board shall not be a member of any
16 panel *unless there is a vacancy in the membership of the board.*
17 Each panel shall annually elect a chair and a vice chair.

18 SEC. 3. *Section 2225.5 of the Business and Professions Code*
19 *is amended to read:*

20 2225.5. (a) (1) A licensee who fails or refuses to comply with
21 a request for the *certified* medical records of a patient, that is
22 accompanied by that patient’s written authorization for release of
23 records to the board, within 15 days of receiving the request and
24 authorization, shall pay to the board a civil penalty of one thousand
25 dollars (\$1,000) per day for each day that the documents have not
26 been produced after the 15th day, *up to ten thousand dollars*
27 *(\$10,000)*, unless the licensee is unable to provide the documents
28 within this time period for good cause.

29 (2) A health care facility shall comply with a request for the
30 *certified* medical records of a patient that is accompanied by that
31 patient’s written authorization for release of records to the board
32 together with a notice citing this section and describing the
33 penalties for failure to comply with this section. Failure to provide
34 the authorizing patient’s *certified* medical records to the board
35 within 30 days of receiving the request, authorization, and notice
36 shall subject the health care facility to a civil penalty, payable to
37 the board, of up to one thousand dollars (\$1,000) per day for each
38 day that the documents have not been produced after the 30th day,
39 up to ten thousand dollars (\$10,000), unless the health care facility
40 is unable to provide the documents within this time period for good

1 cause. This paragraph shall not require health care facilities to
2 assist the board in obtaining the patient's authorization. The board
3 shall pay the reasonable costs of copying the *certified* medical
4 records.

5 (b) (1) A licensee who fails or refuses to comply with a court
6 order, issued in the enforcement of a subpoena, mandating the
7 release of records to the board shall pay to the board a civil penalty
8 of one thousand dollars (\$1,000) per day for each day that the
9 documents have not been produced after the date by which the
10 court order requires the documents to be produced, *up to ten*
11 *thousand dollars (\$10,000)*, unless it is determined that the order
12 is unlawful or invalid. Any statute of limitations applicable to the
13 filing of an accusation by the board shall be tolled during the period
14 the licensee is out of compliance with the court order and during
15 any related appeals.

16 (2) Any licensee who fails or refuses to comply with a court
17 order, issued in the enforcement of a subpoena, mandating the
18 release of records to the board is guilty of a misdemeanor
19 punishable by a fine payable to the board not to exceed five
20 thousand dollars (\$5,000). The fine shall be added to the licensee's
21 renewal fee if it is not paid by the next succeeding renewal date.
22 Any statute of limitations applicable to the filing of an accusation
23 by the board shall be tolled during the period the licensee is out
24 of compliance with the court order and during any related appeals.

25 (3) A health care facility that fails or refuses to comply with a
26 court order, issued in the enforcement of a subpoena, mandating
27 the release of patient records to the board, that is accompanied by
28 a notice citing this section and describing the penalties for failure
29 to comply with this section, shall pay to the board a civil penalty
30 of up to one thousand dollars (\$1,000) per day for each day that
31 the documents have not been produced, up to ten thousand dollars
32 (\$10,000), after the date by which the court order requires the
33 documents to be produced, unless it is determined that the order
34 is unlawful or invalid. Any statute of limitations applicable to the
35 filing of an accusation by the board against a licensee shall be
36 tolled during the period the health care facility is out of compliance
37 with the court order and during any related appeals.

38 (4) Any health care facility that fails or refuses to comply with
39 a court order, issued in the enforcement of a subpoena, mandating
40 the release of records to the board is guilty of a misdemeanor

1 punishable by a fine payable to the board not to exceed five
2 thousand dollars (\$5,000). Any statute of limitations applicable to
3 the filing of an accusation by the board against a licensee shall be
4 tolled during the period the health care facility is out of compliance
5 with the court order and during any related appeals.

6 (c) Multiple acts by a licensee in violation of subdivision (b)
7 shall be punishable by a fine not to exceed five thousand dollars
8 (\$5,000) or by imprisonment in a county jail not exceeding six
9 months, or by both that fine and imprisonment. Multiple acts by
10 a health care facility in violation of subdivision (b) shall be
11 punishable by a fine not to exceed five thousand dollars (\$5,000)
12 and shall be reported to the State Department of Health Services
13 and shall be considered as grounds for disciplinary action with
14 respect to licensure, including suspension or revocation of the
15 license or certificate.

16 (d) A failure or refusal of a licensee to comply with a court
17 order, issued in the enforcement of a subpoena, mandating the
18 release of records to the board constitutes unprofessional conduct
19 and is grounds for suspension or revocation of his or her license.

20 (e) Imposition of the civil penalties authorized by this section
21 shall be in accordance with the Administrative Procedure Act
22 (Chapter 5 (commencing with Section 11500) of Division 3 of
23 Title 2 of the Government Code).

24 (f) For purposes of this section, a “health care facility” means
25 a clinic or health facility licensed or exempt from licensure
26 pursuant to Division 2 (commencing with Section 1200) of the
27 Health and Safety Code.

28 ~~SECTION 4.~~

29 *SEC. 4.* Section 2227 of the Business and Professions Code is
30 amended to read:

31 2227. (a) A licensee whose matter has been heard by an
32 administrative law judge of the Medical Quality Hearing Panel as
33 designated in Section 11371 of the Government Code, or whose
34 default has been entered, and who is found guilty, or who has
35 entered into a stipulation for disciplinary action with the board,
36 may, in accordance with the provisions of this chapter:

37 (1) Have his or her license revoked upon order of the board.

38 (2) Have his or her right to practice suspended for a period not
39 to exceed one year upon order of the board.

1 (3) Be placed on probation and be required to pay the costs of
2 probation monitoring upon order of the board.

3 (4) Be publicly reprimanded by the board. The public reprimand
4 may include a requirement that the licensee complete relevant
5 educational courses ~~selected~~ *approved* by the board.

6 (5) Have any other action taken in relation to discipline as part
7 of an order of probation, as the board or an administrative law
8 judge may deem proper.

9 (b) Any matter heard pursuant to subdivision (a), except for
10 warning letters, medical review or advisory conferences,
11 professional competency examinations, continuing education
12 activities, and cost reimbursement associated therewith that are
13 agreed to with the board and successfully completed by the
14 licensee, or other matters made confidential or privileged by
15 existing law, is deemed public, and shall be made available to the
16 public by the board pursuant to Section 803.1.

17 *SEC. 5. Section 2425.3 of the Business and Professions Code*
18 *is amended to read:*

19 2425.3. (a) ~~The Medical Board of California shall request that~~
20 ~~a~~ A licensed physician *and surgeon shall* report to the board,
21 *immediately upon issuance of an initial license and* at the time of
22 license renewal, any specialty board certification he or she holds
23 that is issued by a member board of the American Board of Medical
24 Specialties or approved by the Medical Board of California.

25 (b) A licensed physician *and surgeon* shall also report to the
26 board, *immediately upon issuance of an initial license and* at the
27 time of license renewal, his or her practice status, designated as
28 one of the following:

29 (1) Full-time practice in California.

30 (2) Full-time practice outside of California.

31 (3) Part-time practice in California.

32 (4) Medical administrative employment that does not include
33 direct patient care.

34 (5) Retired.

35 (6) Other practice status, as may be further defined by the
36 Division of Licensing.

37 (c) (1) A licensed physician ~~may~~ *and surgeon shall* report to
38 the board, *immediately upon issuance of an initial license and* at
39 the time of license renewal, and the board shall collect, information

1 regarding his or her cultural background and foreign language
2 proficiency.

3 (2) Information collected pursuant to this subdivision shall be
4 aggregated on an annual basis based on categories utilized by the
5 board in the collection of the data, and shall be aggregated into
6 both statewide totals and ZIP Code of primary practice location
7 totals.

8 (3) Aggregated information under this subdivision shall be
9 compiled annually and reported on the board's Internet Web site
10 on or before October 1 of each year.

11 *(d) A licensed physician and surgeon shall report to the board,*
12 *at the time of license renewal, if either of the following have*
13 *occurred since his or her last renewal, or if this is the licensee's*
14 *first renewal, since his or her initial license was issued:*

15 *(1) He or she has been convicted of a felony or misdemeanor.*

16 *(2) The filing of a civil action alleging unlawful conduct by the*
17 *licensee, whether or not the licensee was a named party in the*
18 *action.*

19 ~~(d)~~

20 *(e) The information collected pursuant to subdivisions (a) and*
21 *(b) may also be placed on the board's Internet Web site.*

22 *SEC. 6. No reimbursement is required by this act pursuant to*
23 *Section 6 of Article XIII B of the California Constitution because*
24 *the only costs that may be incurred by a local agency or school*
25 *district will be incurred because this act creates a new crime or*
26 *infraction, eliminates a crime or infraction, or changes the penalty*
27 *for a crime or infraction, within the meaning of Section 17556 of*
28 *the Government Code, or changes the definition of a crime within*
29 *the meaning of Section 6 of Article XIII B of the California*
30 *Constitution.*